

Remarks

The Office Action dated July 19, 2004, and made final has been carefully reviewed and the following remarks have been made in consequence thereof.

Claims 1-25 are pending in this application. Claims 1-25 stand rejected.

The rejection of Claims 1-25 under 35 U.S.C. § 103(a) as being unpatentable over Evans (US 6,685,243) is respectfully traversed.

Evans describes a bumper system that includes a beam and an energy absorber having a top, bottom, and middle horizontal sections. The top and bottom sections are collapsible with a parallelogram motion that shifts top and bottom portions vertically up or down upon impact. Evans does not describe nor suggest that the energy absorber is made from a molded mat of fiber reinforced resin material wherein the molded mat has a density of about 600 g/m² to about 3000 g/m².

Claim 1 of the present application recites an energy absorber adapted for attachment to a vehicle for absorbing forces generated from an impact. The "energy absorber comprising a unitary structure comprising a molded mat of fiber reinforced resin material, said molded mat having a density of about 600 to about 3000 grams per square meter wherein density is determined by the weight of a square meter of said molded mat, said structure having a plurality of forwardly projecting crushable lobes adapted to crush upon impact".

Evans does not describe nor suggest an energy absorber as recited in Claim 1. Particularly, Evans does not describe nor suggest an energy absorber made from a molded mat of fiber reinforced resin material wherein the molded mat has a density of about 600 g/m² to about 3000 g/m². The Office Action, at pages 2-3 admits that Evans does not disclose "a molded mat

of fiber reinforced resin material; said molded mat having a density of about 600 to about 300 grams per square meter wherein density is determined by the weight of a square meter of said molded mat; the energy absorber adapted to absorb energy during an impact of the vehicle; absorber of thermoformed or compression molded material; a low density glass mat thermoplastic composite; fiber reinforcement in a matrix of thermoplastic material; mat comprises a chopped glass fiber and a thermoplastic binder material comprising a polyester resin and polycarbonate".

Applicants submit that it would not have been obvious to an artisan skilled in the art at the time the invention was made to make the energy absorber using a molded mat of fiber reinforced resin material where the molded mat has a density of about 600 g/m² to about 3000 g/m². As is well established, to establish a *prima facie* case of obviousness, the prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combine references.

The Office Action, at pages 3-4 suggests that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the energy absorber using a molded mat of fiber reinforced resin material, said molded mat having a density of about 600 to about 300 grams per square meter wherein density is determined by the weight of a square meter of said molded mat" because "it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416".

Applicants respectfully submit that the Office Action has misrepresented and misapplied the holding of the court in *In re Leshin*. The U.S. Court of Customs and Patent Appeals opined that "Mere selection of known plastics to make a container-dispenser *of a type made of plastics prior to the invention*, the selection of the plastics being on the basis of suitability for the intended use, would be entirely obvious". *In re Leshin*, 125, 417-418 USPQ 416 (CCPA 1960) (emphasis added). Applicants submit that for court's opinion to be applicable, it requires that the article be of a type that is typically made from the general class of material from which a specific material is selected, in this case, from a molded mat of fiber reinforced resin material. There has been no showing in the Office Action that the vehicle energy absorber recited in Claim 1 of the present application is a type of energy absorber that is normally made from molded mats of fiber reinforced resin material. Therefore, Applicants submit that it would not be obvious to make the energy absorber of Evans from a molded mat of fiber reinforced resin material where the molded mat has a density of about 600 g/m² to about 3000 g/m². Also, there has been now showing of motivation to make the Evans energy absorber using a molded mat of fiber reinforced resin material where the molded mat has a density of about 600 g/m² to about 3000 g/m². It appears that the only motivation comes from Applicants' disclosure. Applicants submit that the energy absorber recited in Claim 1 of the present application includes a novel and non-obvious use of a known material to make the energy absorber. Accordingly, Applicants submit that independent Claim 1 is patentable over Evans.

Claims 2-25 depend from independent Claim 1. When the recitations of dependent Claims 2-25 are considered in combination with the recitations of Claim 1, Applicants respectfully submit that Claims 2-25 likewise are patentable over Evans.

For the reasons set forth above, Applicants respectfully request that the Section 103(a) rejection of Claims 1-25 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Tersillo", written over a horizontal line.

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